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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

12/9/85

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 9th May, 1985:—

BILL No. XVI OF 1985

A Bill further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Companies (Amendment) Act, 1985.

Substitution of new section for section 293A.

1 of 1956.

2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), for section 293A, the following shall be substituted, namely:—

"Political contributions

Prohibitions and restrictions regarding political contributions.

293A. (*1*) Notwithstanding anything contained in any other provision of this Act,—

(*a*) no Government company; and

(*b*) no other company which has been in existence for less than three financial years,

shall contribute any amount or amounts, directly or indirectly,—

(*i*) to any political party; or

(*ii*) for any political purpose to any person.

(2) A company, not being a company referred to in clause (*a*) or clause (*b*) of sub-section (*1*), may contribute any amount or amounts, directly or indirectly,—

(*a*) to any political party, or

(*b*) for any political purpose to any person:

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent, of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years.

Explanation.—Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning, and for the purposes, of this sub-section:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(3) Without prejudice to the generality of the provisions of sub-sections (*1*) and (*2*),—

(*a*) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to effect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(*b*) the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed,—

(*i*) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(*ii*) where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the person publishing it.

(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(5) If a company makes any contribution in contravention of the provisions of this section,—

(*a*) the company shall be punishable with fine which may extend to three times the amount so contributed; and

(*b*) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.".

Amendment of section 396.

3. In section 396 of the principal Act,—

(*a*) in sub-section (*2*), for the words "The order aforesaid may", the words "The order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and may also" shall be substituted;

(*b*) in sub-section (*3*), for the words "as may be prescribed", the words "as may be prescribed and every such assessment shall be published in the Official Gazette" shall be substituted;

(*c*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (*3*) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Company Law Board and thereupon the assessment of the compensation shall be made by the Company Law Board.";

(*d*) in sub-section (*4*),—

(*i*) in clause (*a*), the word "and", occurring at the end, shall be omitted;

(*ii*) after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) the time for preferring an appeal under sub-section (*3A*) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of; and".

Amendment of section 529.

4. In section 529 of the principal Act,—

(*a*) in sub-section (*1*), the following proviso shall be inserted at the end, namely:—

'Provided that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security,—

(*a*) the liquidator shall be entitled to represent the workmen and enforce such charge;

(*b*) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(*c*) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, which-

ever is less shall rank *pari passu* with the workmen's dues for the purposes of section 529A.";

(*b*) in sub-section (2),—

(*i*) in the proviso, for the words "pay the expenses", the words "pay his portion of the expenses" shall be substituted;

(*ii*) after the proviso, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.";

(*c*) after sub-section (2), the following sub-section shall be inserted, namely:—

'(3) For the purposes of this section, section 529A and section 530,—

(*a*) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947; 14 of 1947.

(*b*) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(*i*) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947; 14 of 1947.

(*ii*) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(*iii*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company; 8 of 1923.

(*iv*) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(*c*) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of—

(*i*) the amount of workmen's dues; and

(*ii*) the amounts of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.'.

Insertion of new section 529A.

5. After section 529 of the principal Act, the following section shall be inserted, namely:—

Over-riding preferential payments.

"'529A. (*1*) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company,—

(*a*) workmen's dues; and

(*b*) debts due to secured creditors to the extent such debts rank under clause (*c*) of the proviso to sub-section (*1*) of section 529 *pari passu* with such dues,

shall be paid in priority to all other debts.

(*2*) The debts payable under clause (*a*) and clause (*b*) of sub-section (*1*) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.".

Amendment of section 530.

6. In section 530 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) in the opening portion, for the words "there shall be paid", the words, figures and letter, "subject to the provisions of section 529A, there shall be paid" shall be substituted;

(*ii*) in clause (*b*), the words, figures and letter "and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947" shall be omitted;

14 of 1947.

(*b*) in sub-section (*2*), the proviso shall be omitted;

(*c*) in sub-section (*8*),—

(*i*) in clause (*b*), the word "and" occurring at the end shall be omitted;

(*ii*) after clause (*b*), the following clause shall be inserted, namely:—

'(*bb*) the expression "employee" does not include a workman; and'.

STATEMENT OF OBJECTS AND REASONS

At present, under section 293A of the Companies Act, there is a blanket ban on political contributions by companies. In his Budget speech, the Finance Minister has made an announcement that with a view to permitting the corporate sector to play a legitimate role within the defined norms in the functioning of our democracy, necessary legislation would be, undertaken to allow companies to make contributions to political parties from out of their profits. For this purpose, it is proposed to substitute (*vide* clause 2 of the Bill) a new section for section 293A of the Companies Act. The new section seeks to continue the existing blanket ban against political contributions in the case of Government companies and companies which have been in existence for less than three financial years. The new section seeks to permit any other company to make political contributions not exceeding five per cent of its average net profits if a resolution authorising such contributions is passed at a meeting of the Board of Directors. The new section also seeks to impose an obligation on every company to disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose. Under the new section, if a company makes any political contribution in contravention of the provisions thereof, the company would be liable to fine which may extend to three times the amount so contributed. Further, every officer of the company in default, would be liable to imprisonment for a term which may extend to three years and also to fine.

2. Another announcement made by the Finance Minister in his Budget speech relates to the decision of the Government to introduce necessary legislation so that legitimate dues of workers rank *pari passu* with secured creditors in the event of closure of the company and above even the dues to Government. The resources of companies constitute a major segment of the material resources of the community and common good demands that the ownership and control of the resources of every company are so distributed that in the unfortunate event of its liquidation, workers, whose labour and effort constitute an invisible but easily perceivable part of the capital of the company are not deprived of their legitimate right to participate in the product of their labour and effort. It is accordingly proposed to amend sections 529 and 530 of the Companies Act and also to incorporate a new section in the Act, namely section 529A (*vide* clauses 4, 5 and 6 of the Bill).

3. Section 396 of the Companies Act empowers the Central Government to order amalgamation of companies in public interest. The Committee on Subordinate Legislation (Seventh Lok Sabha) have recommended that the Company Law Board should be empowered to reasses compensation on appeal from the order of the prescribed authority assessing the compensation payable under an order of amalgamation under this section. The Committee have also recommended that the order of amalgamation itself may provide for the continuation of any pending legal proceedings by and against the transferee company on the lines of

the existing provisions of section 394 of the Act under which the High Court orders amalgamation. Section 396 of the Act is proposed to be amended suitably to give effect to these recommendations (*vide* clause 3 of the Bill).

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 3rd May, 1985.

ARIF MOHAMMAD KHAN.

FINANCIAL MEMORANDUM

According to the proviso which sub-clause (a) of clause 4 of the Bill seeks to insert in sub-section (1) of section 529 of the Companies Act, the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent, specified in the proviso and the liquidator will have the power to represent the workmen and enforce such charge. Sub-section (1) of section 529A, as proposed to be inserted in the Companies Act by clause 5 of the Bill, provides for overriding priority in respect, *inter alia*, of workmen's dues. Under these amendments, the claims of the workmen would thus rank *pari passu* with those of the secured creditors and the Official Liquidators would be required to settle the claims of the secured creditors as well as those of the workmen who will be put on the same footing as the secured creditors. Since the realisation of dues of both would now be through the instrumentality of the Official Liquidator, his workload will be increased tremendously. Additionally, the Official Liquidators will have to run about as contesting party in suits which may be filed by the secured creditors in order that the right of the workers is not jeopardised. It will be necessary for the offices of the Official Liquidators to have separate units for the purpose of adjudicating claims and for disbursement of dues. Keeping in view the minimum staffing support which would be required to operate these cells for implementing the provisions of the Bill, the financial commitment by way of recurring and non-recurring expenditure from the Consolidated Fund of India has been estimated to be of the order of Rs. 20 lakhs as detailed below:

(*i*) Recurring expenditure on account of pay and allowances of staff and officers	Rs. 13,70,000
(*ii*) Non-recurring expenditure for additional office accommodation and furniture required for the officers and staff	Rs. 6,30,000
	Rs. 20,00,000.

SUDARSHAN AGARWAL
Secretary-General.

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